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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ESTATE OF HARRY SMITH, III,	)	
HARRY SMITH, JR., and	)	
ROSLYN WOODARD SMITH,	)	
	)	
Plaintiffs,	)	
	)	Civil Action No.
v.	)	04-1254-GMS
	)	
WILMINGTON POLICE DEPARTMENT,	)	
MICHAEL SZCZERBA and ONE OR	)	
MORE JOHN DOES,	)	
	)	
Defendants.	)	

Videotape deposition of DAVID NATHANIEL GWYN  
taken pursuant to notice at the law offices of Richards,  
Layton & Finger, One Rodney Square, Third Floor,  
Wilmington, Delaware, beginning at 10:34 a.m. on  
Wednesday, August 24, 2005, before Kathleen White Palmer,  
Registered Merit Reporter and Notary Public.

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7 DAVID NATHANIEL GWYN,  
8 the witness herein, having first been  
9 duly sworn on oath, was examined and  
10 testified as follows:

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17 Q. At the point at which you heard the commotion,  
18 you were standing on your porch at 507?  
19 A. I wasn't standing. We were sitting outside.  
20 Q. At the point that you heard the commotion, you  
21 were sitting on your porch at 507 Harrison?  
22 A. I wasn't sitting on my porch. I was sitting  
23 outside on the sidewalk. I wasn't sitting on my porch.  
24 Q. You were sitting outside on the sidewalk in

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1 front of your home at 507?  
2 A. Mm-hmm.

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11 BY MS. SULTON:

12 Q. Before -- before you heard a shot fired, how  
13 many police officers did you see?

14 A. Before the shots?

15 Q. Before you heard a shot fired, how many police  
16 officers did you see?

17 A. I saw the one going down by the house driving  
18 the car.

19 Q. Okay. That's one.

20 A. And you say before, before the shots?

21 Q. Before you remember hearing any shots fired, how  
22 many police officers did you see? We counted the one who  
23 was driving the car past your house.

24 A. Mm-hmm.

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1 Q. Did you see any other police officer before you  
2 heard shots fired?

3 A. I didn't see no more.

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23 Q. Was there anything between you and the three  
24 officers that you saw, a tree, a car, a building, a

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1 person, anything that blocked your view from seeing those  
2 three officers?

3 A. No.

4 Q. So you had an unobstructed view of those three  
5 officers; is that correct?

6 A. I could see clearly.

7 Q. Okay.

8 A. Is that what you mean?

9 Q. Well, there wasn't anything --

10 A. No, no, no.

11 Q. -- that was blocking your view?

12 A. No, no.

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16 Q. That's all right.

17 At any time, Mr. Gwyn, between the time  
18 that you first saw the three police officers and you saw  
19 the car come to rest in front of your home, was your view  
20 ever blocked by anything, trees, cars, other people?

21 A. No.

22 Q. Never?

23 A. Never.

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24 Q. Was it dark outside or was it still some

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1 daylight left?

2 A. It was daylight. It wasn't dark. It was

3 daylight.

4 Q. So you wear glasses. Did you have your glasses  
5 on that day?

6 A. I wear them all the time.

7 Q. You wear them all the time?

8 A. Mm-hmm.

9 Q. Did the police officers come running past you?

10 A. Yes.

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17 Q. And at no point was your view blocked; is that  
18 right?

19 A. Yes.

20 Q. And all the while as the officers were moving  
21 from 5th Street to in front of your house where that car  
22 was stopped, they were firing their guns?

23 A. Yes.

24 Q. The entire time?

53

1 A. Yes.

2 Q. At what point did they stop firing their guns?

3 A. When they got -- excuse me. When they got all  
4 the way -- all the way in back of the car and that car  
5 had stopped, the car had stopped and they fired all the  
6 way up into the back of the car.

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11 BY MS. SULTON:

12 Q. Had the -- were the officers still firing their  
13 car --

14 A. Their guns.

15 Q. -- their guns, were the officers still firing  
16 their guns after the car had stopped?

17 A. Yeah. Wait a minute. Now, say it again.

18 Q. Were the officers still firing their guns after  
19 the car stopped?

20 A. Yes.

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10 Q. Okay. So the officers were still firing when

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11 the car came to a stop; is that correct?

12 A. Yeah.

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22 Q. And you're under oath now. So don't let me put  
23 words in your mouth. If I got something wrong, you tell  
24 me.

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1 A. All right.

2 Q. Because we work just with the truth. Just  
3 whatever the facts are. That's all I can work with.

4 MR. PARKINS: Objection.

5 MS. SULTON: Withdrawn. That wasn't a  
6 question.

7 BY MS. SULTON:

8 Q. All right. So at the point that you first saw  
9 Mr. Smith slumped over toward the steering wheel, were  
10 the police officers still firing their guns?

11 A. Yes.

12 Q. Where were the police officers? Were they  
13 behind the car? On the side of the car? In front of the  
14 car? Where were the police officers?

15 A. Behind the car.

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14 Q. Okay. Between the time that you first noticed  
15 Mr. Smith slumped over toward the steering wheel and the  
16 time that the car stopped, were the officers still firing  
17 their weapons?

18 A. Yes.

19 Q. After that car came to a stop, were the officers  
20 still firing their weapons?

21 A. Yes.

22 Q. Were they behind the car? On the side of the  
23 car? In front of the car? Where were the officers?  
24 After that car stopped and they were still firing their

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1 weapons, where were those officers?

2 A. At no time did I see them in front of the car.

3 At no time.

4 Q. When that car first stopped, the officers were  
5 still firing their weapons; correct?

6 A. Yes.

7 Q. Where were those officers? Were they behind the  
8 car?

9 A. They was in the back of the car.

10 Q. All right. They were in the back of the car?

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11 A. Mm-hmm.

12 Q. Was Mr. Smith slumped over the steering wheel at  
13 the time that that car was stopped? When you first  
14 noticed that car stopped, was Mr. Smith still slumped  
15 over or toward the steering wheel?

16 A. Yes.

17 Q. And were those officers still shooting?

18 A. Yes.

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